

REMARKS

Claim 1 has been amended to address a typographical error. Claims 1-12 and 14-26 are pending in the application. Applicant reserves the right to pursue the original claims and other claims in this and other applications.

Claims 1, 6-8, 14-20 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Serceki et al. (U.S. Pat. Pub. No. 2003/0078072) (“Serceki”) in view of Ford (GB2327567) (“Ford”).

Claims 2-3, 9-10, and 21-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Serceki in view of Ford and U.S. Pat. No. 4,369,332 to Campbell, Jr. (“Campbell”).

Claims 4-5, 11-12 and 24-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Serceki in view of Ford and U.S. Pat. No. 6,226,750 to Triegeer (“Triegeer”).

These rejections are respectfully traversed.

Submitted concurrently herewith is a Declaration of Doug Rollins under 37 CFR 1.131 (the “Declaration”), executed by the inventor of the claimed invention. The Declaration establishes a “prior invention” with respect to the effective date of the Serceki reference (i.e., October 24, 2001). That is, the Declaration establishes conception of the claimed invention prior to the effective date of Serceki (i.e., October 24, 2001) coupled with due diligence from prior to the reference date to the filing date of the present application on November 27, 2001.

Although the Office Action’s rejections are based on 35 U.S.C. §103(a), Serceki is used as a §102(e) reference. Applicant respectfully submits that Serceki is not a proper §102(e) reference, and cannot be used against the present application for the reasons set forth above. *See* M.P.E.P. § 715.07. “A rejection based on 35 U.S.C. 102(e) can be overcome by . . . [f]iling an affidavit or declaration under 37 CFR 1.131 showing prior invention.” M.P.E.P. § 706.02(b).

The relevant portion of 37 CFR 1.131 states: “(a) When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim . . . may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.” *Id.* (emphasis added). The Declaration properly establishes invention of the subject matter of the rejected claims prior to the effective date of the reference cited. Accordingly, Serceki cannot be used as prior art under any provision of §102.

None of the remaining cited references (Ford, Campbell or Trieger), either individually or in combination, teach or suggest each and every element of any of claims 1-12 and 14-26. Accordingly, Applicant respectfully requests that the rejections be withdrawn and the claims allowed.

In view of the above, Applicant believes the pending application is in condition for allowance.

Dated: November 12, 2008

Respectfully submitted,

By  #41198

Thomas J. D'Amico

Registration No.: 28,371

Matthew B. Weinstein (Agent)

Registration No.: 62,202

DICKSTEIN SHAPIRO LLP

1825 Eye Street, NW

Washington, DC 20006-5403

(202) 420-2200

Attorneys for Applicant